Keeping it in the family
Things to consider for family owned and run businesses

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All businesses, regardless of size should spend sufficient time considering how their business is organised and run.

This briefing highlights some of the key legal and structuring considerations that families should be considering about their business. It can be easy to overlook legal and governance matters in favour of more immediate, day to day matters.

However, the need to consider your business structure is particularly important to family owned and run businesses where corporate governance procedures may be unstructured and or informal and family circumstances may change. Rather than keep putting off such matters, now is as good a time as any, to spend some time focusing in on these areas.

A failure to structure one's business correctly can be detrimental to its opportunities for succession, growth and or value realisation, potentially resulting in it losing its competitive advantage or being sold or transferred in a manner that nobody really wants.

How is your family business structured?
To head off any potential issues it is important both to understand the different legal structures which your business might adopt and once a particular ownership model is adopted, to periodically revisit this, particularly in anticipation of or during times of transition. The legal and / or governance framework that may have worked at one point in a business life cycle or for one generation can threaten or even destroy the business in the next generation or put an unnecessary strain on family relationships.

Business owners should ideally separate their businesses from themselves and wherever possible avoid personally guaranteeing any business liabilities.

To the extent any such guarantees are required however, careful thought needs to be given to guarantor liability and the scope, materiality and terms of any such agreement.

What is the experience and knowledge of the directors?
Being a director brings with it a number of significant legal duties and responsibilities. This is the case whether or not the directors have an executive or a non-executive role. Care needs to be given to ensure that all directors attend meetings on a reasonably regular basis (i.e. including any directors not otherwise involved in the business) and are kept sufficiently aware and up to date on the business's activities.

Whilst some family businesses are understandably reluctant to let outsiders become directors, it is also important to ensure a business's leadership team maintains the right blend of skills, education and experience. Any failures in this regard could have a far reaching effect on the long term success of the business and potentially the directors (both executive and nonexecutive) personally, given a significant failure to follow one's statutory or other contractual obligations could, ultimately, expose them to civil or even criminal sanctions.

Even if the number of non-family member "director level" appointments is minimised there can be advantages to empowering certain senior executives via formal committees / board reporting roles.

How are the next generation to be introduced into the business?
Many family businesses lack succession plans either because they shy away from or fail to recognise the fact that at some point the founding or current generation will either want to or need to step down or because too much trust is placed upon the expectation that the family will, at some later point but just not today, work it out when it becomes necessary.

It might be wise to spend some time to initially create and then re-visit any agreed succession plan / management structure (or, indeed a simple letter of wishes) can diminish future family quarrels and often financial or legal trouble for the company.

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Is the business sufficiently protected in the event of a family breakdown?
Family breakdowns are always stressful and distressing. It can be all too easy for the personal circumstances or relationships to spill over and negatively impact one's business with potentially disastrous consequences for both the business and family personnel involved therein. It is therefore imperative that due consideration is given to how a business will need to continue to operate, function and be owned in the event of a family breakdown.

Consideration should also be had as to exactly what assets are owned by the business.

Generally only assets belonging to and actually used by the business should be held by the business and such entity should not also be used to hold any personal assets. Any purported attempt to shield personal assets by transferring them into the business to purportedly shield them from divorce proceedings will be a fruitless exercise.

How can BCR Law help?
BCR Law are delighted to assist family businesses in dealing with these key considerations. Examples of how BCR Law could assist includes:

- Advising on appropriate business mediums for the family business and how to transfer the assets of one type of business to another business medium
- Advising on succession planning, wills estates and for the integration of the next generation into the business
- Preparation of bespoke memorandum and articles of associations, family constitutions, shareholder agreements and other corporate policy documents to address key family dynamics and requirements
- Preparation of pre and or post nuptial agreements to preserve personal assets in the event of a future dissolution of the marriage / civil partnership

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below:

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